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Supreme Court, U.S.
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No. 95-361

In the Supreme Court of the United States

OCTOBER TERM, 1995

SUN COUNTRY AIRLINES, INC., PETITIONER

v.

FEDERAL AVIATION ADMINISTRATION

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

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QUESTION PRESENTED

Whether the Federal Aviation Administration adequately justified its adoption of a rule requiring air carriers to provide duty scheduling limitations and rest requirements for flight attendants.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-3a) is unreported, but the decision is noted at 56 F.3d 1531 (Table).

JURISDICTION

The judgment of the court of appeals was entered on May 30, 1995. A petition for rehearing was filed on July 14, 1995, and was denied on July 28, 1995. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1) and 49 U.S.C. 46110(e).

STATEMENT

The Federal Aviation Administration (FAA) has adopted a rule requiring air carriers, air taxis, and commercial operators to provide duty period scheduling limitations and rest requirements for flight attendants. Petitioner, a charter air carrier certified by the FAA under Part 121 of the Federal Aviation Regulations, 14 C.F.R. Pt. 121, requested the court of appeals to invalidate that rule. Petitioner contended that the FAA's rule violated the Administrative Procedure Act (APA), 5 U.S.C. 701 *et seq.*, because the agency did not provide an adequate justification for its action. The court of appeals rejected that argument and denied petitioner's request for relief. Pet. App. 1a-3a.

1. The Federal Aviation Act of 1958, as recodified, 49 U.S.C. 40101 *et seq.*, empowers the FAA to promote civil air safety by prescribing regulations "for the maximum hours or periods of service of airmen and other employees of air carriers." 49 U.S.C. 44701(a)(4) (1994) . The FAA has issued regulations under that authority establishing limitations on flight duty and rest requirements for air carrier flight crew members, including pilots, flight engineers, and flight navigators. See 14 C.F.R. 121.471; 14 C.F.R. 121.481-121.493; 14 C.F.R. 121.500-121.525.

In 1985, the FAA received petitions for rulemaking from the Association of Flight Attendants and the Joint Council of Flight Attendants Unions. They urged the FAA to issue flight and duty time regulations for flight attendants. See 50 Fed. Reg. 6185 (1985); 50 Fed. Reg. 25,252 (1985). On January 23, 1989, the FAA concluded that the proposed rule-

making was not in the public interest and denied the petitions. See Pet. App. 7a. Four years later, the FAA revisited that issue. On March 26, 1993, the FAA issued a notice of proposed rulemaking suggesting duty period scheduling limitations and rest requirements for flight attendants engaged in air transportation and air commerce. See 58 Fed. Reg. 17,024 (1993). The FAA received comments, and on August 19, 1994, it issued a final rule establishing the limitations and requirements at issue here. See 59 Fed. Reg. 42,974; see Pet. App. 4a-85a.

Subject to certain exceptions, the rule limits the scheduled duty periods for flight attendants on domestic flights to fourteen hours. A carrier may permit flight attendants to exceed applicable limitations on scheduled duty periods if it augments the number of flight attendants on a flight above the number otherwise required by regulation. Subject to certain exceptions, the rule also requires a minimum rest period of nine hours after a duty period of fourteen hours or less and a minimum rest period of twelve hours after duty periods exceeding fourteen hours. Alternatively, air carriers may satisfy the rule by imposing on flight attendants the same duty limitations and rest requirements that apply to other flight crew members. See 14 C.F.R. 121.467; Pet. App. 74a-77a.

2. On September 1, 1994, petitioner requested the United States Court of Appeals for the District of Columbia Circuit to review the FAA's rule. See 49 U.S.C. 46110 (1994) (authorizing the court of appeals to review FAA regulations). Petitioner contended that the FAA had failed to provide an adequate justification for the rule in light of the agency's 1989 decision not to require duty limitations and rest periods

for flight attendants. The court of appeals denied the petitioner's request for relief. Pet. App. 1a-3a.

The court of appeals observed that this Court's decision in *Motor Vehicle Mfrs. Ass'n* v. *State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29 (1983), requires an agency "to supply a reasoned analysis" supporting a change in the agency's position. Pet. App. 2a. The court concluded that the agency had done so here. It noted that the FAA had explained in the rulemaking that a 1989 study of flight attendant flight, duty, and rest times in the air carrier industry (which was completed after the agency terminated the earlier rulemaking) had prompted the agency to rethink its earlier decision. *Ibid.* The court of appeals concluded that "it is clear from the record and from the agency's stated rationale that it adopted a new position based on new information." *Ibid.*

ARGUMENT

1. Petitioner is mistaken in contending (Pet. 13) that the court of appeals' decision "seriously undermines" the principles set out in this Court's decision in *State Farm, supra.* The court of appeals correctly recognized that the FAA was obligated to provide a "reasoned analysis" for its departure from its previous position. Pet. App. 2a. The court examined the FAA's explanation for the rule, which was set out in the rulemaking record. It concluded the FAA was entitled to renew its examination of the issue in light of additional data (principally a 1989 study of flight attendant duty times) that had become available after the FAA had denied the previous rulemaking petitions. Pet. App. 2a.

Petitioner contends (Pet. 15) that the 1989 study could not provide "the necessary empirical foundation

for the 1994 rule" because an FAA official had testified before a congressional subcommittee in 1991 that a new rule was not necessary. See Pet. App. 93a-132a (reproducing committee testimony). That contention is not well founded. An agency official's testimony before a congressional committee should not preclude the agency from initiating new rulemaking to reexamine a problem or the data relevant to its resolution. This case demonstrates why a rule of that sort would be inappropriate. The official's testimony did not express an inalterable position. *Id.* at 96a (stating that the matter is not "a closed book"). Members of the subcommittee strongly questioned the official's conclusions. See *id.* at 97a-111a, 113a-116a, 118a-128a, 130a-132a. The agency was entitled to reconsider its position, reevaluate the significance of the 1989 study, and redetermine the need for action. See *Chevron U.S.A. Inc.* v. *Natural Resources Defense Council, Inc.*, 467 U.S. 837, 863-864 (1984) (an agency must consider "the wisdom of its policy on a continuing basis").

2. Petitioner is incorrect in its contention (Pet. 17-20) that the court of appeals' decision conflicts with decisions from other circuits. The court of appeals' ruling that the FAA had adequately identified reasons for its departure from a prior agency decision is consistent with the supposedly conflicting cases that petitioner cites. See *Citizens Awareness Network, Inc.* v. *NRC*, 59 F.3d 284, 291-292 (1st Cir. 1995); *Radio Ass'n on Defending Airwave Rights, Inc.* v. *Department of Transportation*, 47 F.3d 794, 804-805 (6th Cir. 1995), cert. denied, 116 S. Ct. 59 (1995); *United Video, Inc.* v. *FCC*, 890 F.2d 1173, 1181-1182 (D.C. Cir. 1989). In each of those cases, the courts invoked the *State Farm* standard and required

the agency to provide a "reasoned analysis" for the agency's departure from a prior decision. The courts evaluated the adequacy of the particular justifications in each case. None of the cases suggests any confusion or conflict as to the correct legal standard.

3. In reality, petitioner objects to the court's application of the familiar *State Farm* standard to the facts of this case. This Court does not normally grant review to determine whether an established legal standard was correctly applied in a particular instance. See, *e.g.*, *Mobil Oil Corp.* v. *Federal Power Comm'n*, 417 U.S. 283, 309-310 (1974). This case presents no reason for the Court to depart from that practice. It presents only fact-specific questions that do not merit further review. See, *e.g.*, *Rice* v. *Sioux City Memorial Park Cemetery, Inc.*, 349 U.S. 70, 73-74 (1955); *United States* v. *Johnston*, 268 U.S. 220, 227 (1925).

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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